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Help from Rome

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WHEN I ended my studies at Columbia Law School, I was grieved to find that my notions of the law were very obscure. In this perplexity, I consulted two of my professors. Professor Nathan Abbott, who had taught us the intricacies of the common law of real property, and impressed us with his deep learning and keen discrimination of cases, told me that he had sought in vain to form clear concepts of legal principles. He had delved in Plato and Aristotle, but to no avail. Professor J. Frank Goodnow, great authority on administrative law, and later President of Johns Hopkins University, said: "The longer I teach law, the hazier my own ideas become." I had discovered to my dismay that learned judges of our highest courts in their majority and dissenting opinions sometimes show such a divergence of view as would shock a mind accustomed to the precision of mathematics and the physical sciences. The frequent overruling of lower by higher tribunals has made a cynic name the latter "courts of highest conjecture."

Is there no way out of this fog?

I believe, from personal experience, that a French advocate has pointed the way in an article on "The Function of Comparative Law," in Harvard Law Review, May, 1922. He says (p. 858): "When one is immersed in his own law, in his own country, unable to see things from without, he has a psychologically unavoidable tendency to consider as natural, as necessary, as given by God, things which are simply due to historical accident or temporary social situation. If I may state a personal experience, I never completely understood the French law before coming to the United States and studying another system."

The value of comparison has long been known in theory and practice. It is recognized in discussion and debate. Its scientific value has been shown in the fruitful comparative study of political institutions, language, religion, and law. Comparative jurisprudence is now an established field of research, with a vast special literature and eminent workers, and has shed a brilliant light on the origin and purpose of legal institutions and rules. Maine's "Ancient Law," first published in 1861, is an early work in this field, but is still used as an eye-opener in some of our law schools.

It is not, however, this comparison which I shall discuss, for most of us have no time for historical and ethnological research, which forms a large part of the work of comparative jurisprudence, but must busily apply the existing law of the forum to our clients' present needs.

The French advocate above quoted was a practising lawyer, but he never completely understood the French law before studying another system. He was trained in the civil law. He then studied the English common law, and the comparison cleared his legal view. The converse is equally true. Readers of Blackstone's Commentaries are struck by the remarkable clarity of the author's exposition. As a part of the training which will enable one to "enter upon the study of the law with incredible advantage and reputation," he specifies a contemplation of "those maxims reduced to a practical system in the laws of imperial Rome." (Bk. 1, p. 33.) He later describes the Institutes, Digest, Code, and Novels, "as there will frequently be occasion to cite them, by way of illustrating our own laws." (Bk. 1, p. 80.) Blackstone made the

* Reprinted by permission from the Lincoln Law Review of October 1, 1928.

comparison, and produced an immortal work of unrivaled clearness of view.

What are the effects of this legal fog?

If one is ill, he goes to a physician, who prescribes some medicine or sends him to a surgeon, who uses the knife. The patient is not required to lug to the consultation room an armful of medical books and journals to show the son of Aesculapius how to act. "Curia novit leges,"—the court knows the law,—but alack, unlike the doctor, it may demand briefs for its guidance. These are compiled, "line upon line," "precept upon precept," by patient clerks who plod through a ponderous mass of cases in a sort of clipping-bureau activity, the product of which is dignified by the name of legal learning. These cases multiply like rabbits, and the result is a bulky and costly array of progeny that must either kill itself in its own poison, as bacteria sometimes do, or kill the patience of the lawyer who depends on them for his daily bread.

Effect of Rule of Stare Decisis

The rule of stare decisis, prevalent in English jurisprudence for the past 300 years, is partly to blame for this evil. It is partly due, I venture to surmise, to the unscientific manner of dealing with the common law. In the civil-law countries of Europe, the jurisprudence is systematized and scientifically taught by professors whose influence is greater than that of teachers of law in our own country. Our case system of teaching fosters the evil. Instead of legal principles, we seek cases. The learned judge craves a case, the practitioner shouts "Eureka" when he has found a case, and the law clerk beams with great glee when the discovery of a case rewards his clipping-bureau research.

The case, when found, will probably contain a little lean meat embedded in much superfluous fat. The adipose part may comprise a display of platitudes, chips and shavings left by the process of thought, an "elaboration of the obvious," or an impressive row of citations. An eminent judge of our court of appeals once said to me: "Oh, if the courts would only declare that such is the law, and not try to give reasons!" It is a common fault, as the new psychology shows, of man, the rational animal.

Doubtless at times the court should explicitly and fully state the grounds of its decision. (See a criticism of a "memorandum decision" of the United States Supreme Court in Harvard Law Review, January, 1927, p. 491.) In many cases, however, such opinions are needless repetition.

How can we use birth control on this proliferating mass of judicial opinions?

A law book agent suggested this unacademic remedy: Let all judges be compelled to write out their opinions, and, in so doing, to sit with both feet on the floor and to refrain from tobacco or other solace.

The more academic remedy which I propose is comparison. There are certain fundamentals which are common to all cultivated systems of law. This was recognized centuries ago by the Roman jurists. "Omnes populi, qui legibus et moribus reguntur, partim suo proprio, partim communi omnium hominum iure utuntur." (Dig. 1, 1, 9.) A comparison of systems of jurisprudence permits us to distinguish the essential and fundamental from the accidental—"things which," according to the French advocate, "are simply due to historical accident or temporary social situation." Inability to discern the essential begets obese opinions, verbose "forms," and sinning against the rule that pleadings "shall contain a plain and concise statement of the material facts, without unnecessary repetition." (C. P. A. § 241.)

Other disciplines are also helpful. Blackstone further recommends a perusal of the classical historians and orators, the study of logic and mathematical demonstrations, and "a view of the several branches of

genuine experimental philosophy." (Bk. 1, p. 33.) These, however, are propædeutic. The final utility comes from comparison.

Confining the attention to a single system of law is as narrowing as constantly living in one community or associating with a single class of people, or reading only one side in questions of religion and politics. A physician who limited his knowledge to writings of doctors of his own land and ignored those of foreign countries would not be abreast of his profession. A protestant clergyman who knows nothing of Roman Catholic doctrine, or a priest of Rome who knows nothing of Protestant dogma, is narrow of mind. Yet how many of our judges ignore the civil law, and are content to confine their legal learning to the English common law! Would it not be as beneficial for them to take courses in law in a foreign university as it is for our physicians to study at Vienna or Berlin?

Salutary Effect of Comparative Jurisprudence

A notable example of the salutary effect of comparison is found in the Roman law itself. The old ius civile —the civil law proper—was applicable only to litigants who were Roman citizens. If one or both of the parties were foreigners, the prætor peregrinus (the foreign prætor) had to apply a foreign law. This frequently differed from the municipal law of Rome by variations peculiar to the people in question. The foreign prætors, therefore, culled the common and essential from the accidental and peculiar in the divers foreign laws and customs, and developed a system of simple, common-sense rules known as the ius gentium, which ultimately, by the work of the great Roman jurists, became the chief and most valuable part of the civil law of Rome, and a solid foundation of the jurisprudence of most of the Christian states of the modern world.

It is not my aim to compare the merits of the English common law with the modern civil law, or its fruitful parent, the great body of Roman law compiled under the Emperor Justinian, but I merely suggest a pleasant and practical method by which law students, practising attorneys, and wearers of the judicial robe can attain clearer concepts of the basic principles of law in general and of the system in which they specialize.

The reader, who may be unacquainted with the civil law, can make such acquaintance in a few opinions of the courts of this state.

Surrogate Fowler has cited it frequently. See the copious citations in Re Van Ness, 78 Misc. 593, 139 N. Y. Supp. 485, and Re Swartz, 79 Misc. 388, 139 N. Y. Supp. 1105. In construing a will, he wrote: "That a writing is to be construed according to the intention of the writer certainly is not new, . . . and this fact the Corpus Juris abundantly confirms. (D. 50, 17, 96.) The civilians are of great authority in courts of this character, . . . as in processes of interpretation the Roman law and the civilians are frequently consulted." Re Lummis, 101 Misc. 258, 265, 266, 166 N. Y. Supp. 936. The court of appeals in Silsbury v. McCoon, 3 N. Y. 379, 53 Am. Dec. 307, adopted the Roman law in deciding that the owner of corn was not deprived of his ownership by the act of a wilful trespasser in converting the corn into whisky. The Roman law is compared at length with the common law, and Ruggles, J., says: "But we think the civil law in this respect is in conformity not only with plain principles of morality, but supported by cogent reasons of public policy." (page 391.) In the case of Barkley v. Wilcox, 86 N. Y. 140, 40 Am. Rep. 519, however, where the plaintiff sought to recover damages sustained by the obstruction of the natural flow of surface water from his lot over and across the lot of the defendant, the court of appeals considered, but rejected, the Roman law,

which would have decided in plaintiff's favor. (page 145.)

The Roman law, to which reference is made, is contained in a collection, later known as the Corpus Juris Civilis, compiled by order of the Emperor Justinian in the first half of the sixth century of the Christian era. It comprises four parts: The Institutes, intended as a brief textbook for the imperial law schools, and invested with statutory force; the Digest or Pandects, containing systematically arranged excerpts from the works of the great Roman jurists; the Code, a collection of ordinances (constitutiones) of the Roman emperors; the Novels, mostly in Greek, comprising the later imperial ordinances of Justinian himself. The Institutes and the Digest, a rich mine of legal lore, are limpid and concise, and quite as easy to read as the Latin prose of Cicero and Caesar. The Institutes are no larger than an ordinary work on the elements of business law.

Educators have long recognized the value of the discipline of making translations. If conscientiously done, it gives a command of our mother tongue and develops a limpidity and elegance of style which marks the diction of those brought up under classical training. . . .

While jurisprudence may possibly never attain the precision of mathematics and be evolved *more geometrico* from a few axioms and postulates, or be deduced from an immutable law of nature, or so codified, after the ideal of Jeremy Bentham, that learned judges can be dispensed with, surely it can and must in this country, which takes pride in its practical and efficient methods of business, attain greater precision and simplicity and junk its unnecessary equipment. Our statutes are too numerous, lengthy, and explicit, compared with those of civil-law states. Our judicial opinions are too long and too abundant. In spite of the plethora of cases, which no mortal can ever fully ponder, the many appeals and reversals and dissents prove the uncertainty of our existing law. The poor judge must, therefore, look wise and call for briefs.

Simplification of the Law

The Roman law can again be helpful by pointing to a remedy. When Justinian ascended the throne of the Eastern Roman Empire in A. D. 527, he found three sources of existing Roman law: (1) The writings of the jurists as determined by Valentinian's Law of Citations; (2) the earlier imperial ordinances (Codex Gregorianus and Codex Hermogenianus); (3) the Codex Theodosianus and its Novels. Out of these materials the Corpus Juris Civilis was constructed (Sohm's Institutes, § 21).

The Roman judges did not write opinions as in the English common law. They were bound, however, by the responsa prudentium, or answers given by lawyers whom they consulted. At first, the authority of the responses was confined to the particular actions for which they had been rendered, but they were soon collected and became binding precedents in future cases. If they agreed on the same question, the judge was bound to follow them, but if they differed the Emperor Hadrian permitted him to choose. This development was completed by the Law of Citations of Valentinian III. (A. D. 426), which enacted that the writings of the jurists Papinian, Paulus, Ulpian, Gaius, and Modestinus, and of all writers cited by them, should bind the judge; that, if opinions differed on the same question, that one should prevail which was supported by the largest number of these jurists; if the numbers were equal, Papinian should prevail; and if he had expressed no opinion the judge might exercise his discretion. These are the "writings of the jurists," analogous to our case opinions, which were one source of the law when Justinion mounted the throne.

What did he do with this mass of legal precedent? In A. D. 539, he

addressed an ordinance (De Conceptione Digestorum) to his minister Tribonian, directing the latter to choose a commission of lawyers to assist in collecting in fifty books, under the title of Digest or Pandects, the best decisions in these "writings of the jurists," omitting what was antiquated, avoiding all contradiction and repetition (unum pro omnibus sufficiat), and improving the language when necessary.

This commission of sixteen eminent jurists was divided into three sections, each to extract from a particular group of writings: The first section, from the writings of Sabinus and his commentators; the second, from works pertaining to the Pretorian Edict; the last, from the writings of Papinian and his commentators.

The Digest was complete by the end of A. D. 532, and went into effect as a statute, along with the Institutes, on December 30, 533. "The results of the development of Roman law," says Professor Sohm, "extending over more than a thousand years, had been summed up. Instead of a wilderness of juristic writings, there was a uniform work, easy of survey and methodical in execution."

The Digest can be printed in ordinary newspaper type in a single quarto volume no thicker than a volume of the modern Corpus Juris. Twenty such books occupy less than two sections of a standard sectional bookcase. What would Tribonian have done with forty or fifty sections full of New York decisions? Being a pagan, he might have committed suicide!

Suggestions

What shall we do with them?

I respectfully offer the following suggestions:

For the present, let judges make it a point of honor, when opinions are deemed necessary, to condense them as much as possible, stating only the facts pertinent to the decision and the legal rules actually applied, omitting all dicta and superfluous elaboration. Only when it is a case of first impression should argumentation and greater length be permitted. This will constitute the printed majority opinion. The present syllabus should be its model. No dissenting opinion should be printed.

If, for the enlightenment or solace of counsel and parties in the case at bar, the court may wish to state its reasoning more fully, this can be done in a further typewritten opinion, copies of which shall be given to counsel. Such opinion may be used on appeal or reargument, but shall not be printed in the official reports, or be quoted as a precedent in any other action.

Perhaps an expert opinion writer might be appointed to condense and edit the opinions of the courts.

A further step would be courses in the law schools on opinion writing. The instructor should be trained in both civil and common law, scholastic logic, and concise English expression. The students might be required to write opinions on a given statement of fact, or on some printed record on appeal. Part of the instruction would comprise the criticism and condensation of opinions selected from the published reports.

But how are we to clean the Augean stables of the mass that has already accumulated? This would obviously be the Herculean labor of a commission like that chosen by Tribonian. It could surely begin by discarding all cases overruled by a higher court or exploded by subsequent legislation. It could then select the leading and ruling cases and scrutinize their progeny. All later cases applying the rules should be rejected unless the application substantially elucidated their meaning. The policy should be that of Justinian —unum pro omnibus sufficiat—let one clear statement suffice for all. Possessors of the existing printed reports could be notified of the rejected cases, and future reprints would omit them wholly. No excluded case could be cited in any court.

(Continued on Page Thirty-two)

Forfeiture of Automobile for Illegal Act of Passenger

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CAN an action for the condemnation and sale of an automobile for the alleged illegal act of the owner, under the words "aided and assisted," contained in the state act, be maintained without affirmative showing on the part of the prosecution of knowledge on the part of such owner so alleged to be assisting, or such negligence as to charge him with knowledge that his property has been, or is about to be, used for illegal purposes?

Upon this question there seem to be a number of conflicting decisions, both in the state and Federal courts, some holding that such owner is not entitled to make a defense of lack of knowledge or absence on his part of acts from which negligence might be reasonably inferred, and that the finding and seizure, in the passenger's possession, of the contraband article, is sufficient to subject the property to forfeiture and sale. There have been several decisions to this end, both under the prohibition and poison acts, but the better doctrine would appear to be that the words "aiding and assisting," used in the act, imply either knowledge on the part of the person aiding and assisting, or the commission of some act that might fairly be denominated as gross or culpable negligence on his part.

"Where the undisputed facts show that neither the owner of a taxicab nor the chauffeur had knowledge that a passenger was using a car to transport intoxicating liquor, and that the owner had not been negligent in employing the chauffeur, and had directed him not to use the car for illegal purposes, the court will not order the car forfeited." [1]

In Nebraska it has been held that a law prohibiting the manufacture and sale of intoxicating liquors, and providing for the confiscation of property used in the traffic, will not be construed to forfeit the property of innocent citizens, unless a legislative intent is manifest that such forfeiture is necessary for the preservation of the public health and safety.[2] This question more frequently arises where the automobile is stolen and thereafter ordered condemned and sold while in the possession of the thief; in such case the rule seems to be that the true owner who has no knowledge of such illegal use, can recover it in replevin after establishing his ownership and the fact of the theft; and this proceeds on the very excellent reason that the holder can acquire no better title than the possessor had at the time of the seizure.[3]

In State v. Davis,[4] the court uses this language: "Where intoxicating liquors have been found illegally in an automobile used for their transportation, it is prima facie evidence that the car was being used illegally, and one desiring to recover the car must establish by a preponderance of the evidence, not beyond a reasonable doubt, the fact of his owner-

[1] Cornelius, Search & Seizure, 601; State ex rel. Black v. Southern Exp. Co. 200 Ala. 31, 75 So. 343.

[2] State v. Jones-Hansen Cadillac Co. 103 Neb. 353, 172 N. W. 36.

[3] Armstrong v. State, 85 Fla. 452, 96 So. 399; Smith v. Spencer-Dowler Co. 24 Ga. App. 235, 100 S. E. 651; Dickinson v. Elliott, 77 Okla. 311, 188 Pac. 660.

[4] State v. Davis, 55 Utah, 54, 184 Pac. 161.

ship, and that he had no knowledge of its illegal use. To this same effect are Aldinger v. State, 115 Miss. 314, 75 So. 441; Vance v. State, 130 Miss. 251, 93 So. 881; Oakland Motor Car Co. v. United States (C. C. A. 9th) 295 Fed. 626.

Perhaps as interesting a case on this subject as any arose in California in the city of San Francisco, where the passenger hired the driver and owner of the car to drive him through the city while he had in his possession, but without the driver's knowledge, certain narcotics upon which the tax had not been paid. It also appeared that certain of the goods had been sold by the passenger. Both the owner and the passenger were indicted by the grand jury; the passenger pleaded guilty, while the owner was acquitted. A libel was then filed by the government to forfeit the automobile, which, it was contended, was used by the men to remove and conceal the narcotics, with the intent to defraud the government. The libel was dismissed; Judge Dooling, in his opinion so ordering, saying: "It has long been held that the innocence of any fraud on the part of the owner will not relieve him from a forfeiture if he has consented to the use of the vehicle by the party violating the law. The latest exposition of the law is to be found in J. W. Goldsmith, Jr.-Grant Co. v. United States, 254 U. S. 505, 65 L. ed. 376, 41 Sup. Ct. Rep. 189. . . .

The present case has to do with a passenger. The difficulties arising in such a case are suggested, but not disposed of, by the Supreme Court in the Grant Co. Case. . . . The question is, therefore, 'must one who takes passengers for hire by automobile or stage, on train or boat, search the baggage of each individual applying for passage, and the individual himself, for illicit liquor or unstamped drugs, on penalty of having his vehicle forfeited for failure to do so? Strict as is this law, I do not believe it should be so strictly construed as to require an affirmative answer to the question.[5]

That the decisions of the several states concerning the rights of mortgagees or other lienors in property sought to be forfeited are not in accord is not significant, when it is considered that the several state acts and congressional enactments differ widely, some being unqualified, while others expressly or impliedly exempt such interests from forfeiture. But it will be observed, by a close reading of the provisions of the National Prohibition law on the subject, that the interests of all bona fide lienors would not be subject to forfeiture. That act provides: "The court upon conviction of the person so arrested shall order the liquor destroyed, and unless good cause to the contrary is shown by the owner shall order a sale by public auction of the property seized, and the officer making the sale shall pay all liens according to their priorities which are established by intervention or otherwise, at said hearing, or in other proceedings brought for said purposes as being bona fide and as having been created without the lienor having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor, and shall pay the balance of the proceeds into the Treasury of the United States as miscellaneous receipts."[6]

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[5] United States v. One Haynes Automobile (D. C.) 290 Fed. 399.

[6] J. W. Goldsmith, Jr.-Grant Co. v. United States, 254 U. S. 505, 65 L. ed. 376, 41 Sup. Ct. Rep. 189; Cornelius, Search & Seizure, 605; Barnes's Fed. Code (Supp.) 8352a.

See also annotations in L.R.A.1916E, 343; 2 A.L.R. 1596; 5 A.L.R. 213; 47 A.L.R. 1055.

Among the New Decisions

Four things belong to a judge: To hear courteously, to answer wisely, to consider soberly, and to decide impartially.—*Socrates.*

Attorneys — *refusal to follow instructions — liability.* In an action by a client upon an alleged agreement of his attorney to make good losses on securities purchased under the attorney's advice, it is held in McCoy v. Hydrick, 143 S. C. 135, 141 S. E. 174, that recovery cannot be had under the rule that it is the attorney's duty to follow special instructions given him.

The annotation accompanying this case in 56 A.L.R. 953, treats of an attorney's liability for failure to follow client's instructions.

Bail — *sureties' property encumbered — effect.* The fact that the real property of sureties, tendered as such in a criminal case, is encumbered by liens is held in the West Virginia case of State ex rel. Garbutt v. Charnock, 141 S. E. 403, not to justify their rejection on the recognizance, where it clearly appears, and is not denied, that their equities in the properties make them amply financially qualified to discharge the obligation.

This case is annotated in 56 A.L.R. 1094, on qualification of surety on bail bond as affected by lien or encumbrance on his real property.

Bankruptcy — *release of indorsers — receiving payment from bankrupt.* The acceptance by a bank of payment of a note from the maker within four months of his bankruptcy, and surrender of the note, with knowledge of his financial embarrassment, is held not to prevent its looking to the indorsers for payment in case it is compelled to refund by his trustee in bankruptcy, in the Virginia case of Horner v. First Nat. Bank, 141 S. E. 767, to which is appended in 56 A.L.R. 1358, annotation on payment voidable under bankruptcy act as discharge of surety, guarantor, or indorser.

Banks — *notice — effect of notations on check.* Notations on a check, intended to indicate the purpose of the payment attempted to be made thereby, are held to have no effect against the bank in which the check is deposited by the payee in the case of First Nat. Bank v. School Dist. 173 Minn. 383, 217 N. W. 366, which is followed by annotation in 56 A.L.R. 1369, on notation or memorandum on bill or note as notice.

Bills and notes — *indorsement — separate instrument.* One undertaking in a separate instrument to guarantee a mortgage securing a promissory note is held not to be an indorser of the note, in the Wisconsin case of Bergmann v. Puhl, 217 N. W. 746, although the instrument is attached to the note.

Indorsement of bill or note by writing not on instrument itself is

the subject of the annotation appended to this case in 56 A.L.R. 915.

Bills and notes — *failure to present draft — effect.* Where the holder of a draft, payable on demand, negligently fails to present the same for payment within a reasonable time, there being funds for its payment, and thereafter the drawer fails, the holder, it is held in Commercial Invest. Trust v. Lundgren-Wittensten Co. 173 Minn. 83, 216 N. W. 531, must suffer the loss.

Annotation on loss from insolvency of bank before presentment of bank draft, as falling upon purchaser of draft or upon subsequent holder, is appended to this case in 56 A.L.R. 492.

Brokers — *license — right of director to commission for selling corporate property.* A director of a corporation, it is held in the California case of Phelan v. Hilda Gravel Min. Co. 263 Pac. 520, cannot recover a commission for the sale of its real estate, where he does not possess the license which the statute requires real estate brokers to possess.

Annotation on who is a real estate agent, salesman, or broker within the meaning of a statute accompanies this case in 56 A.L.R. 476.

Carriers — *duty to warn passenger.* A street car company, it is held in the New Hampshire case of Wright v. Boston & M. R. Co. 139 Atl. 370, is under no obligation to warn a passenger about to alight from a car not to alight until the car stops, if the fact that the car is moving is known to the passenger.

The duty and liability of a carrier to a passenger attempting to leave moving street car is considered in the annotation appended to this case in 56 A.L.R. 975.

Constitutional law — *deprivation of property — making waters public.* A statute, declaring waters flowing in a natural channel public and subject to appropriation, so far as they are not being applied to a useful or beneficial purpose, or reasonably needed for such purpose, is held in the California case of Fall River Valley Irrig. Dist. v. Mt. Shasta Power Corp. 259 Pac. 444, to unconstitutionally deprive riparian owners of their property without due process of law.

Constitutionality of statutes affecting riparian rights is the subject of the annotation accompanying this case in 56 A.L.R. 264.

Contempt — *effect of imprisonment.* Committing one to jail for contempt in refusing to obey an order to pay alimony and counsel fees is held not to operate as a rescission of the order in the Maryland case of Skirven v. Skirven, 140 Atl. 205, which is accompanied in 56 A.L.R. 697, by annotation on commitment for contempt in failing to obey order of court as purging one of contempt.

Contempt — *refusal of attorney to produce witness.* An attorney, it is held in the Arizona case of Ex parte Speakman, 257 Pac. 986, cannot be required, by virtue of his official relation to the court, to do any act that would aid in producing any person to be used as a witness, either by himself or someone else.

Annotation on duty of attorney to call witness or to procure or aid in procuring his attendance accompanies this case in 56 A.L.R. 169.

Corporations — *overvaluation of property delivered for stock — recovery of difference.* A corporation, it is held in Crumley v. Crumley Business College, 120 Or. 306, 252 Pac. 85, which issues stock in consideration of property cannot hold the stockholder liable for the unpaid value of the stock on the ground of overvaluation of the property delivered.

The annotation appended to this case in 56 A.L.R. 392, treats of the right of a corporation itself, in the absence of fraud against it, to complain that stock issued as fully paid was based on overvaluation of property, or receipt of less than par value.

Criminal law — *unlawful arrest as bar to prosecution.* Where there has been an unlawful arrest of a person accused of a crime, it is held in the West Virginia case of State v. McClung, 104 W. Va. 330, 140 S. E. 55, that the fact of such arrest will not bar a prosecution upon an indictment afterwards regularly found against the accused.

This case is accompanied by annotation in 56 A.L.R. 257, on unlawful arrest as bar to prosecution under subsequent indictment or information.

Damages — *conversion by carrier.* The measure of damages for the conversion by a carrier of goods delivered to it for transportation is held in Orange Nat. Bank v. Southern P. Co. 162 La. 223, 110 So. 329, to be the value of the goods at the time and place of conversion, less freight charges.

The annotation which follows this case in 56 A.L.R. 1167, treats of the measure of damages for a carrier's conversion of goods.

Deeds — *handing to grantee — belief that recording necessary — effect.* The mere handing of a deed to the grantee, under the belief that it would be of no effect until recorded, and under the grantee's promise not to record except upon a specified contingency, is held not to pass the title in the case of Hotaling v. Hotaling, 193 Cal. 368, 224 Pac. 455, to which is appended in 56 A.L.R. 734, annotation on the conclusiveness of the manual delivery of a deed to the grantee as an effective legal delivery.

Divorce — *garnishment for alimony.* That garnishment does not lie to enforce a decree for periodical allowances of alimony is held in Toth v. Toth, 242 Mich. 23, 217 N. W. 913, which is followed by annotation in 56 A.L.R. 839, on garnishment or attachment of property to enforce an order or decree for alimony or an allowance in a suit for divorce or separation.

Eminent domain — *right of town to compensation for taking of highway.* When a town has a qualified property or interest in its highways, it is held in Bedford v. United States, 23 F. (2d) 453, to be entitled to compensation for the injury inflicted upon it by the taking and destruction of a part of a highway by an exercise by the United States of its power of eminent domain.

Right of public body to compensation where property held by it is taken for another public purpose is the subject of the annotation which accompanies this case in 56 A.L.R. 360.

Evidence — *bigamy — proof of dissolution of prior marriage.* The state, it is held in the Alabama case of Fuquay v. State, 114 So. 898, after establishing a prima facie case in a prosecution for bigamy, is not required to prove that the prior marriage had not been dissolved, which is a fact peculiarly within the cognizance of the defendant.

Presumption and burden of proof, in prosecution for bigamy, as to dissolution of first marriage, is the subject of the annotation appended to this case in 56 A.L.R. 1264.

Evidence — *witnesses — negligence — existence of insurance.* Where a plaintiff in a personal-injury action seeks by appropriate interrogatories on the cross-examination to discover whether the defendant is indemnified from loss by an insurance company, it is held to be erroneous in the case of Jessup v. Davis, 115 Neb. 1, 211 N. W. 190, for the court to sustain an objection to interrogatories which tend to develop the fact on that question.

The admissibility of evidence, and the propriety and effect of questions, statements, comments, etc., tending to show that defendant in a personal injury or death action carries liability insurance is treated in the annotation accompanying the foregoing case in 56 A.L.R. 1403.

False pretenses — *means of ascertaining falsity — effect.* That one is not relieved from guilt under the false pretense statute, in falsely stating that property which he sells is free from encumbrances, by the fact that the purchaser could have ascertained the falsity of the statement by examining the public records is held in Slaughter v. Com. 222 Ky. 225, 300 S. W. 619, which is followed by annotation in 56 A.L.R. 1209 on false statement as to matter of record as false pretense within criminal statute.

Garnishment — *wages paid in advance.* In absence of fraud and collusion, it is held in the Nebraska case of Salyers Auto Co. v. De Vore, 217 N. W. 94, that no garnishable debt can arise from a contract for personal services, where, pursuant to terms of the employment, the employee is paid in advance. This rule extends not only to amounts paid as compensation, but also to payments made in advance to cover necessary expenses thereafter to be incurred by the employee in performing the contract of employment.

Annotation on garnishment of salaries, wages, or commissions not expressly exempted by statute is appended to this case in 56 A.L.R. 594.

Innkeepers — *automobile as baggage.* An automobile kept by one renting an apartment in a hotel, in the hotel garage, is held not to be baggage in the Iowa case of Cedar Rapids Invest. Co. v. Commodore Hotel Co. 218 N. W. 510, within the meaning of the innkeeper's lien statute which defines baggage as including all property which is in any hotel belonging to or under the control of any guest.

This case is annotated in 56 A.L.R. 1098 on automobile as subject of innkeeper's lien.

Innkeepers — *hotel clerk — authority to waive regulations.* A hotel clerk is held in the Massachusetts case of Wilder v. Warren Hotel Co. 159 N. E. 456, to be without authority to waive a conspicuously posted regulation known to the guest, requiring anyone to whom a room is not assigned to place his baggage in the charge of the porter, if he does not retain custody of it himself.

The authority of a clerk or other employee to waive an innkeeper's regulation as to baggage or valuables is treated in the annotation appended to the foregoing case in 56 A.L.R. 313.

Insurance — *consulting physician — osteopath.* A question in an application for life insurance as to physicians or practitioners consulted is held in Mutual L. Ins. Co. v. Geleynse, 241 Mich. 659, 217 N. W. 790, to include osteopaths.

Annotation on who is a physician, practitioner, etc., within the meaning of an application for an insurance policy is appended to this decision in 56 A.L.R. 702.

Insurance — *cost of reproduction.* The amount of insurance recoverable for total loss of a building is held in McAnarney v. Newark F. Ins. Co. 247 N. Y. 176, 159 N. E. 902, not to be the cost of reproduction less physical depreciation under a policy insuring to the extent of actual cash value ascertained with proper deductions for depreciation, not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within reasonable time after loss.

The question of test or criterion of "actual cash value" under insurance policy insuring to the extent of actual cash value at time of loss is considered in the annotation following this case in 56 A.L.R. 1149.

Insurance — *fall of building — extent of liability.* That recovery may be had for all property destroyed by fire, although the building falls by the

force of a cyclone after the fire starts, under a policy providing that, if the building or any part of it fall except as the result of a fire, all insurance shall cease is held in the case of Hartford F. Ins. Co. v. Doll, 23 F. (2d) 443, to which is appended in 56 A.L.R. 1059, annotation on provision of fire insurance policy terminating insurance upon fall of building except as result of fire.

Insurance — *insurer under receivership — coinsurance.* That a corporation carrying insurance on a certain risk is under receivership when another insurer issues a policy on the risk is held not to prevent the latter from becoming a coinsurer in the Iowa case of Globe Nat. F. Ins. Co. v. American Bonding & C. Co. 217 N. W. 268, which is followed in 56 A.L.R. 463, by annotation on pro rata provisions of insurance policy as affected by insolvency or receivership of other insurer or invalidity of other policy.

Insurance — *inventory — time of taking.* A policy of fire insurance rendered void by noncompliance with its requirement that inventories be made and kept cannot it is held in the Alabama case of Pennsylvania F. Ins. Co. v. Malone, 115 So. 156, be revived by the act of the insured in making a subsequent or belated inventory.

This case is accompanied in 56 A.L.R. 1075, by annotation treating of belated compliance with requirement of insurance policy as to books and inventory.

Letters of credit — *liability for negligent information.* One purchasing a draft relating to a letter of credit after the latter has expired is held in Courteen Seed Co. v. Hong Kong & S. Bkg. Corp., 245 N. Y. 377, 157 N. E. 272, not to be liable to the one establishing the credit for loss due to his accepting a shipment covered by the draft, and paying it, in reliance upon a telegram by the purchaser of the draft to its correspondent that the purchaser had drawn "under credit," without awaiting arrival of documents showing when the draft was drawn.

Liability of one who purchases draft and secures its payment after letter of credit has expired is the subject of the annotation which follows this case in 56 A.L.R. 1186.

Libel — *effect of failure to reply.* That one is not precluded from recovering damages for the publication of a libel because he failed to reply to or deny charges made against him is held in the case of Otero v. Ewing, 162 La. 453, 110 So. 648, which is followed in 56 A.L.R. 249, by annotation on failure to deny or to reply to charge or to take other steps to mitigate damages as affecting recovery for libel or slander.

License — *employment agents.* A state is held in the case of Ribnik v. McBride, — U. S. —, 72 L. ed. (Adv. 614), 48 Sup. Ct. Rep. 545, to have power to require a license and to regulate the business of an employment agent.

The constitutionality of a statute regulating employment agencies is considered in the annotation which accompanies this case in 56 A.L.R. 1327.

License — *privilege — sale of water.* The legislature, it is held in the Tennessee case of Seven Springs Water Co. v. Kennedy, 299 S. W. 792, may make the sale of natural water a privilege subject to taxation, although the Constitution provides that the direct product of the sale shall be exempt in the hands of the producer.

The annotation appended to this case in 56 A.L.R. 496, treats of the power to lay a privilege tax on the occupation or business of selling or manufacturing a product which is itself exempt from tax.

Master and servant — *dinner to employees — business of master.* A

dinner given employees of an automobile sales agency by the manager, as a token of his appreciation for services rendered for the company and himself, at which he speaks of the desirability of closer relations and the presentation of grievances, it is held in Askerson v. Edwin M. Jennings Co., 107 Conn. 393, 140 Atl. 760, may be found to have been in the business of the principal so as to render it liable for injury to an employee by the negligence of a driver of its car, in which he is transporting employees from the function.

The responsibility of an employer for injury during a social affair is treated in the annotation which follows this case in 56 A.L.R. 1127.

Mortgage — *executors and administrators — power of sale — interest.* Mortgagee's power of sale is held in the New Mexico case of Stewart v. Smalling, 261 Pac. 814, to be coupled with an interest, and, on the mortgagee's death, to pass, with the interest, to his personal representatives.

This case is annotated in 56 A.L.R. 221, on power of sale in mortgage or deed of trust as one coupled with interest.

Mortgage — *refusal to satisfy — liability — good faith.* Refusal by a mortgagee to execute a discharge, when acting in good faith and under the honest belief that the debt has not been paid, is held in the South Dakota case of Mathieu v. Boston, 216 N. W. 361, not to bring him within the operation of a statute making a mortgagee guilty of refusing to execute a discharge liable to the mortgagor for all damages which he may sustain by reason of such refusal, and to an additional specified penalty.

Annotation on the validity and construction of statute allowing penalty and damages against mortgagee refusing to discharge mortgage on real property follows this case in 56 A.L.R. 332.

Negligence — *renting canoe to intoxicated person — liability.* One conducting a boat livery is held to violate no legal duty in renting a canoe to a person under the influence of intoxicating liquor, but not so intoxicated as to be incapable of protecting himself, in the Massachusetts case of Osterlind v. Hill, 160 N. E. 301, which is followed in 56 A.L.R. 1123, by annotation on liability for renting or loaning a boat to one who is intoxicated or otherwise unfit to manage it.

Physicians and surgeons — *liability for negligence — abandonment of case without notice.* A physician jointly employed with another to treat a patient and to render joint services cannot it is held in the Colorado case of Bolles v. Kinton, 263 Pac. 26, relieve himself of responsibility for negligent treatment by simply staying away, without notice to the patient.

The liability of a physician or surgeon who abandons case is discussed in the annotation following this case in 56 A.L.R. 814.

Public service commissions — *order of Public Utilities Department — unreasonable interference with property rights.* An order of the Department of Public Utilities which requires a telephone company to become the owner of, and utilize, wires installed by others, and which the company may be called on to reject because incompatible with the performance of the service which it undertakes to give, is held in the Massachusetts case of New England Teleph. & Teleg. Co. v. Department of Public Utilities, 159 N. E. 743, to be an unreasonable interference with its rights of property.

Duty to furnish telegraph or telephone service to privately wired or equipped building is the title of the annotation accompanying this case in 56 A.L.R. 784.

Railroads — *crossing — duty to look and listen.* When a traveler upon a public highway approaches a steam railway which intersects at grade the highway, with one or more tracks, with an intention of crossing over,

it is the duty of such traveler, it is held in the Ohio case of Pennsylvania R. Co. v. Rusynik, 159 N. E. 826, before going upon the railway, to look both ways and listen for the approach of trains; and such looking and listening must be at such time and place and in such manner as will be effective to accomplish the ends designed thereby. When the view of such traveler in either direction is temporarily obscured by a passing train, smoke, steam, or dust arising therefrom, it is the duty of such traveler to defer his crossing and remain in a place of safety until such obstruction has passed away and a clear view is afforded.

The annotation which is appended to this case, in 56 A.L.R. 538, treats of the contributory negligence of one who attempts to cross railroad tracks just after a train, or part of a train, has passed over the crossing.

Railroads — *duty to stop before crossing track.* One attempting to drive an automobile over a railroad crossing with which he is familiar is held to be negligent in the case of Baltimore & O. R. Co. v. Goodman, 275 U. S. 66, 72 L. ed. (Adv. 22), 48 Sup. Ct. Rep. 24, so as to prevent recovery for his death by being struck by a train, where, when his view of the track is obstructed, he does not stop and look, and, if necessary, leave the vehicle, to make sure that the crossing is safe.

The question of the duty of driver whose view at a railroad crossing is obstructed to leave his vehicle in order to get an unobstructed view before crossing is treated in the annotation following this case in 56 A.L.R. 645.

Schools — *injury to pupil during transportation — liability.* Furnishing free motor transportation to public school children under § 10,465, Okla. Comp. Stat. 1921, by a district board of a consolidated school district, is a public governmental function, and neither said school district, nor said board, nor the individual members thereof, are held to be liable in damage in Consolidated School Dist. v. Wright, 128 Okla. 193, 261 Pac. 953, for injuries to a pupil caused by the negligence of its officers, agents, or employees in the control or operation of its motor truck for such purpose, where they have acted in good faith and without malice.

The liability of a school district, municipal corporation, or school board, for injury to pupil is treated in the annotation which follows this case in 56 A.L.R. 152.

Sheriff — *liability for breakage in eviction.* A sheriff is held not liable in Johnson v. Nelson, 146 Wash. 500, 263 Pac. 949, for minor items of breakage caused by the eviction of a tenant, where negligence was not shown, although the plaintiff's title fails, and the landlord may be liable.

Annotation on liability for damage to person or goods during execution of eviction process accompanies this case in 56 A.L.R. 1035.

Workmen's compensation — *action by minor.* Under the Workmen's Compensation Law of Oklahoma, it is held in the case of United States Fidelity & G. Co. v. Cruce, 129 Okla. 60, 263 Pac. 462, that an eighteen-year-old employee may maintain in his own name a proceeding against his employer for compensation for an accidental injury arising out of and in the course of his employment.

The right of a minor to bring a proceeding under the workmen's compensation act in his own name and without guardian or next friend is discussed in the annotation accompanying this case in 56 A.L.R. 879.

Workmen's compensation — *suicide — right to compensation.* That the suicide of one rendered insane by overwork in his employment may arise out of, and in the course of, his employment within the operation of the Workmen's Compensation Act is held in Wilder v. Russell Library Co., 107 Conn. 56, 139 Atl. 644, which is followed by annotation in 56 A.L.R. 455, on suicide as compensable.

A.L.R. Annotations in Volume 56 Include These Subjects:

Annotation concentrates to a focal point the learning on a subject.

Automobiles — Constitutionality and effect of statute relating to civil liability of person driving automobile while under influence of liquor. 56 A.L.R. 327.

Banks — Trust or preference in assets of insolvent bank or trust company in respect of funds which it held as executor, administrator, or testamentary trustee. 56 A.L.R. 806.

Bills and notes — Effect on note of acceleration of mortgage securing note. 56 A.L.R. 185.

Bills and notes — Words, "credit the drawer," on note, as affecting liability of one who signs before delivery. 56 A.L.R. 232.

Bonds — Insolvency of obligee as extending time allowed by fidelity bond for discovery of default. 56 A.L.R. 1263.

Bonds — What amounts to embezzlement or larceny within fidelity bond. 56 A.L.R. 967.

Brokers — Failure of title as fault or default of owner within exception in contractual provision denying broker's right to commissions if sale is not closed. 56 A.L.R. 913.

Buildings — Power to forbid or restrict repair of wooden building within fire limits. 56 A.L.R. 878.

Carriers — Power of municipality to maintain public hack stand on property of carrier. 56 A.L.R. 767.

Case — Liability of carrier or other bailee because of misinformation as to time or place of arrival or storage of goods. 56 A.L.R. 1382.

Checks — Right to countermand, or stop payment on, cashier's check. 56 A.L.R. 532.

Contracts — Right to recover on quantum meruit for broker's services in buying or selling real estate where contract is not in writing as required by statute in relation to brokers. 56 A.L.R. 783.

Corporations — Corporation doing business and making contracts under assumed name. 56 A.L.R. 450.

Corporations — Duty of corporation upon presentation for transfer of stock standing in one's name as trustee or other fiduciary. 56 A.L.R. 1199.

Corporations — Payments by stockholders applicable upon double liability. 56 A.L.R. 527.

Corporations — Reimbursement of stockholder or officer of corporation for expenses incurred in connection with transaction conducted in his name but in interest of corporation. 56 A.L.R. 973.

Corporations — Right of corporation to prefer creditors. 56 A.L.R. 207.

Damages — Damages recoverable by owner or occupier of surface on account of subsidence due to mining operations. 56 A.L.R. 310.

Damages — Injury to prestige or reputation as element of damages for employer's breach of contract for services. 56 A.L.R. 901.

Damages — Right to recover for mental pain and anguish alone, apart from other damages. 56 A.L.R. 657.

Death — On whose behalf may action be maintained for the wrongful death of adopted child. 56 A.L.R. 1349.

Easements — Rule of visible easements as applied to easement of light or air. 56 A.L.R. 1138.

Electricity — Induction, conduction and electrolysis. 56 A.L.R. 421.

Electricity — Liability of one maintaining high-tension electric wires over private property of another for injuries thereby inflicted. 56 A.L.R. 1021.

Escape — What justifies escape or attempt to escape, or assistance in that regard. 56 A.L.R. 666.

Evidence — Applicability of res ipsa loquitur to explosion of gases or chemicals. 56 A.L.R. 593.

Evidence — Parol-evidence rule; right to show fraud in inducement or execution of written contract. 56 A.L.R. 13.

False pretenses — False representation in business transaction as within statute relating to "confidence game." 56 A.L.R. 727.

Forgery — Procuring signature by fraud as forgery. 56 A.L.R. 582.

Fraudulent conveyances — Delivery of key as satisfying condition of immediate delivery and actual or continued change of possession to uphold sale of personal property against subsequent purchaser or third persons generally. 56 A.L.R. 518.

Guardian and ward — Duty of one purchasing ward's property, or loaning money on security of such property, to see that proceeds are properly applied. 56 A.L.R. 195.

Highways — Liability for conditions in space between lot lines and sidewalk actually within limits of street, but apparently part of the abutting property. 56 A.L.R. 220.

Highways — Regulation of use of highways by private motor vehicles for hire. 56 A.L.R. 1056.

Injunction — Injunction as a proper remedy by licensor where license to use real property is revoked. 56 A.L.R. 1110.

Insurance — Accident insurance: construction and effect of provision for indemnity in case of injury in consequence of burning of building. 56 A.L.R. 491.

Insurance — Blood poisoning traceable to attendance upon patient as within the coverage extended by accident policy. 56 A.L.R. 870.

Insurance — Construction and effect of specific provision in accident or life insurance policy in relation to homicide or intentional injury by third person. 56 A.L.R. 685.

Insurance — Duty of insurer to investigate mental competency of insured to designate or change designation of beneficiary, or as to fraud or undue influence in that regard. 56 A.L.R. 1123.

Insurance — Effect of provision declaring loss in case of mortgagee's interest subject to the terms and conditions of the policy. 56 A.L.R. 850.

Insurance — Liability of mortgagee under mortgage clause for insurance premiums. 56 A.L.R. 679.

Insurance — Overvaluation in proof of loss of property insured as fraud avoiding fire insurance policy. 56 A.L.R. 390.

Landlord and tenant — Power of equity to relieve against forfeiture of lease for nonpayment of rent. 56 A.L.R. 800.

Legislature — Power of legislature or branch thereof as to time of assembling, and length of session. 56 A.L.R. 721.

Life tenants — Rights as between life beneficiaries and remaindermen in corporate dividends or distributions during the life interest. 56 A.L.R. 1287.

Life tenants — Rights as between life tenants and remaindermen to the increase in the value of the estate. 56 A.L.R. 1315.

Limitation of actions — When Statute of Limitations begins to run against warrant of municipal or quasi municipal corporation. 56 A.L.R. 830.

Malicious prosecution — Immunity of prosecuting officer from action for malicious prosecution. 56 A.L.R. 1255.

Master and servant — Liability of employer for injury to wife of employee through latter's negligence. 56 A.L.R. 331.

Perjury — Rule as to corroborative evidence in prosecutions for subornation of perjury. 56 A.L.R. 407.

Public improvements — Assessments for improvements by the front-foot rule. 56 A.L.R. 941.

Railroads — Liability of railroad for injury due to road vehicle running into train or car standing on highway crossing. 56 A.L.R. 1114.

Sale — Bringing action for price as waiver by conditional vendor of right to reclaim property. 56 A.L.R. 238.

Sunday — Sports, games, or amusements as work, labor, avocation, business, or the like within Sunday laws. 56 A.L.R. 813.

Taxes — State tax on goods purchased by, or for the benefit of, the Federal government, or on the privilege of conducting the business in connection with which the sales are made. 56 A.L.R. 587.

Vendor and purchaser — Duty of purchaser of real property to disclose to the vendor facts or prospects affecting the value of the property. 56 A.L.R. 429.

Workmen's compensation — Applicability of state compensation act to injury within admiralty jurisdiction. 56 A.L.R. 352.

Workmen's compensation — Injury after discharge. 56 A.L.R. 859.

Workmen's Compensation — Injury to servant who lives on employer's premises as arising out of or in the course of the employment. 56 A.L.R. 512.

Annotations in 57 A.L.R. Include These Subjects:

Abatement and revival — Survival of action or cause of action for alienation of affections or criminal conversation. 57 A.L.R. 351.

Accounts — What constitutes an open, running account within the Statute of Limitations. 57 A.L.R. 201.

Acknowledgment — Formal acknowledgment of instrument by one whose name is signed thereto by another as an adoption of the signature. 57 A.L.R. 525.

Automobiles — Automobile crossing street at a point other than a street intersection. 57 A.L.R. 1106.

Automobiles — Employer's liability for negligence of employee in driving his own car or other vehicle in employer's business. 57 A.L.R. 739.

Banks — Constitutionality of statutes relating to personal liability of officers or directors of bank. 57 A.L.R. 888.

Banks — Trust or preference in respect of money used to purchase exchange or to be transmitted. 57 A.L.R. 1168.

Bigamy — Mistaken belief in existence, validity, or effect of divorce or separation as defense to prosecution for bigamy. 57 A.L.R. 792.

Carriers — Liability of carrier which delivers goods sent C. O. D., without cash payment. 57 A.L.R. 937.

Commerce — Statute or ordinance in relation to advertising as interference with interstate commerce. 57 A.L.R. 105.

Constitutional law — Constitutionality of statute providing for substituted or constructive service upon nonresident in action for tort in connection with automobile. 57 A.L.R. 1239.

Constitutional law — Sectarianism in schools. 57 A.L.R. 195.

Constitutional law — Validity of regulations as to plumbers and plumbing. 57 A.L.R. 136.

Covenants — Multiple residence structures as violation of restrictive covenants. 57 A.L.R. 244.

Criminal law — Pardon as affecting previous offenses or punishment therefor. 57 A.L.R. 443.

Crops — Right to crops sown or grown by one wrongfully in possession of land. 57 A.L.R. 584.

Evidence — Conviction or acquittal as evidence of facts on which it was based in a civil action. 57 A.L.R. 504.

Fraudulent conveyances — Applicability of Bulk Sales Law to chattel mortgages and sales thereunder. 57 A.L.R. 1049.

Husband and wife — Liability of person acting under authority of one spouse for injury to other spouse. 57 A.L.R. 755.

Injunction — Injunction on ground of inconvenience against prosecuting action in a particular state or district. 57 A.L.R. 77.

Injunction — Mandatory injunction as remedy for breach of restrictive covenant affecting real property. 57 A.L.R. 336.

Insurance — Accident insurance: death or injury intentionally inflicted by another as due to accident or accidental means. 57 A.L.R. 972.

Insurance — Death or injury while flying as within policy of life or accident insurance. 57 A.L.R. 625.

Judges — Waiver of disqualification of judge. 57 A.L.R. 292.

Judgment — Decree of alimony in instalments as within full faith and credit provision. 57 A.L.R. 1113.

Lottery — Scheme for advertising or stimulating legitimate business as a lottery. 57 A.L.R. 424.

Mortgage — Right of mortgagor or owner of equity of redemption to cut timber. 57 A.L.R. 451.

Municipal corporations — Liability of municipality in respect of municipal bathhouses, bathing beaches, and swimming pools. 57 A.L.R. 406.

Negligence — Liability for injury to person in street by fall of part of structure of completed building. 57 A.L.R. 1028.

Officers — Personal liability of public official for personal injury on highway. 57 A.L.R. 1037.

Physicians and surgeons — Liability for injury by X-ray. 57 A.L.R. 268.

Records — Photostatic or other method of recording instrument. 57 A.L.R. 159.

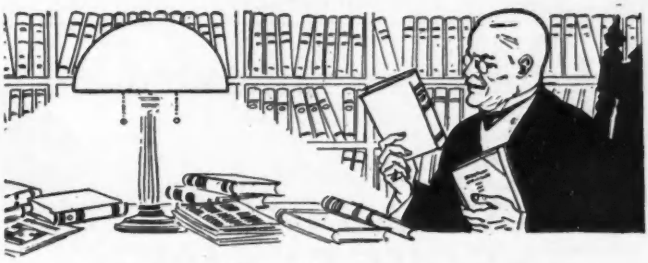
Subscription — Consideration for subscription agreements. 57 A.L.R. 986.

Taxes — What property of electric, gas, water, telephone, or street railway company constitutes real property for taxation purposes. 57 A.L.R. 869.

Wills — Effect of witness signing before testator signs. 57 A.L.R. 833.

Wills — Joint and mutual wills. 57 A.L.R. 607.

Workmen's compensation — Right to compensation for results of exposure to contagious disease. 57 A.L.R. 631.



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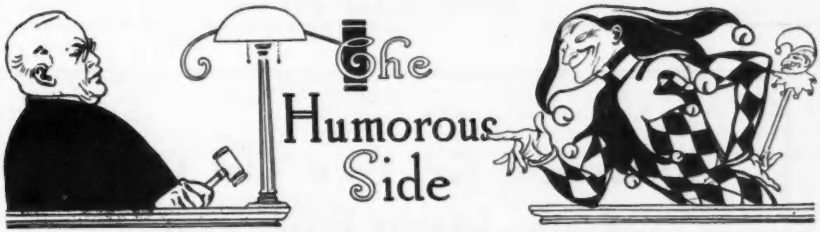
LEGAL NOVELS. In an article entitled "The Reading of Lawyers" which appeared in the Dickinson Law Review for October, 1928, Mr. Walter H. Hitchler says: "Lawyers do not go to novels to learn the law and I do not recommend it. The purpose I have in mind is a very different one. It is to direct the attention of lawyers to the pleasure and need of a class of reading which, while not strictly professional, is diverting and entertaining, and which will be indirectly profitable to them in their own special field of learning. . . .

"It has been suggested that every bar association ought to have a list of classic legal novels, and at least one copy of every such novel on its shelf. In this suggestion, I concur."

THE RIGHT TO STRIKE. This important subject is ably presented on page 52 of the University of Pennsylvania Law Review for November 1928, in an article by Alpheus T. Mason. He observes: "'Neither the common law nor the Fourteenth Amendment confers the absolute right to strike.' Such is the recent authoritative declaration of the United States Supreme Court. (Dorchy v. Kansas, 272 U. S. 306, 47 Sup. Ct. Rep. 86.) . . . The Court's concise statement simply makes it clear that the common law sets limits on the right to strike and suggests that state legislatures are not without authority to prescribe certain restrictions within the bounds of the Fourteenth Amendment. The purpose of this paper is to consider the limitations which the common law places on the right to strike and to review the most important legislation bearing on the subject."



Who mixed reason with pleasure and wisdom and mirth.—*Goldsmith.*

From a Punster

I have no use for lawyers,
That I have I won't pretend;
I admit, though, one comes handy
When a felon needs a friend.
—J. W. in Boston Transcript.

Played no Favorites.—He was looking for a quiet place to park his car, and, seeing a side street, turned into it, put the brake up, and was walking off when a policeman appeared.

"You can't leave your car there."

"Why not? It's a quiet spot."

"I tell you you can't leave it there."

"But, my good man, it's a cul-de-sac."

"I don't care if it's a Rolls-Royce, out with it."—Tit-Bits.

Common Sense or Brains.—The judge of the probate court was trying to determine the intelligence of Mamie Lee, a thirteen-year-old colored girl, who had been considered "not quite bright." Pointing to the woman who had brought Mamie into court, the judge said:

"Mamie, if Mrs. Garrick weighs 165 pounds, standing on both feet, how much does she weigh standing on one foot?"

Mamie eyed the judge suspiciously, and replied: "Does you want me to use my common sense, or does you want to see if I can divide by two?"
—True Story Magazine.

Just Missed It.—An Omaha lawyer, whose office was on the twelfth floor of a skyscraper, was expecting a client from the country. The door opened and the client entered, puffing violently.

"Some walk up those twelve flights," he gasped.

"Why didn't you ride the elevator?" asked the lawyer.

"I meant to, but I just missed the blame thing!" was the reply.
—"Forbes Epigrams."

A Fast Runner.—Mose Jackson, black, was up before a magistrate for assault.

"What's your name?" asked the judge.

"Well, Judge, your honoh, ev'ywhere Ah go they gives me a new name, but mah maiden name was Mose."

"Tell us, Mose, did you strike this man in an excess of irascibility?" the lawyer for the prosecution asked.

"No, boss, Ah done hit him in the stummick."

"Now, Mose, tell us what he did after you hit him," pursued the prosecution, which wanted to prove that Mose's blow had incapacitated the plaintiff.

"He done ran."

"You say he ran?"

"Yessah, Yessah, he done ran all right."

"You're sure he ran?"

"Ah sure is."

"Well, did he run fast?"

"Did he run fa—say, boss, ef dat culled man had a had just one pinfeather in his hand he'd a flew!"
—Detroit Free Press.

An Honorarium Desired.—"How is it," asked a police magistrate of a culprit haled before him for robbery, "that you managed to take this man's watch from his vest pocket when it was secured by a patent safety catch?"

"My fee, your honor," replied the man politely and with dignity, "is $10 for the full course of six lessons."
—Everybody's Magazine.

Titters in Court.—English Magistrate: "You say the plaintiff is a relative of yours?"

Witness: "Yes, by bigamy."

Solicitor (at Shoreditch): "How much does your husband earn?"

Woman: "Now, I ask you, Would you tell your wife?"

Boy, Fetch the Atlas.—"Wanda's uncle has left her $5,000 a year in perpetuity."

"Fine! But does she have to go there and live to get it?"—Judge.

An Inference.—"What is your name?"

"My name is Angus MacPherson MacNabb," said the prisoner.

"And who bought you the whisky?" said the judge.—Brooklyn (N. Y.) Life.

No Change.—An attempt to settle a little difference between a man and his wife is reported by Judge Humphreys:

"Do you act toward your wife as you did before you married her?"

"Exactly. I remember just how I used to act when I first fell in love with her, I used to lean over the fence in front of her house and gaze at her shadow on the curtain, afraid to go in. And I act just the same way now."

—Reidsville (N. C.) Review.

A Sporting Event.—Down in Arkansas a man was tried for assault and battery with intent to kill. The state produced as evidence the weapons used—a rail, a gun, a saw, and a rifle. The defendant's counsel exhibited as the other man's weapons a scythe blade, pitchfork, pistol, dog razor, and hoe. After being out several hours the jury gave their verdict:

"We, the jury, would have given a dollar to see the fight."

—Charleston News and Courier.

Safety First.—"Offisher, you'd better lock me up. Jush hit my wife over the head wish a club."

"Did you kill her?"

"Don't think sho. Thash why I want to be locked up."—America's Humor.

A Case for the Judge.—The young judge had a bootlegger before him. It was his first case, and he was undecided as to what to do with the offender. Excusing himself for a moment he stepped into the corridor and met an old-time jurist.

"Oh, Judge," he said, "I've a bootlegger before me, and I don't know what to give him."

"Well," replied the old timer, don't give him more than $4 a pint—that's all I ever give."—The Bookan Wrap.

The Tally.—Judge: "Isn't this the fifth time you have been arrested for drunkenness?"

Old Friend Sot: "Don' ash me. I thought you'sh keeping score!"

—V. M. I. Sniper.

Conclusive Proof.—Young Lawyer: "Your Honor, I claim the release of my client on the grounds of insanity; he is a stupid fool, an idiot, and he is not responsible for any act he may have committed."

Judge: "He doesn't appear stupid to me."

Prisoner (interrupting): "Just look at the lawyer I've hired, your Honor."

—Wakefield (Mass.) Item.

Safety Ueber Alles.—"Well," the judge said, "since you have no counsel, I shall have to assign you a lawyer to defend you."

"If you don't mind, Your Honor," the meek prisoner, who had been accused of bigamy, replied, "I'd rather have a couple of husky policemen."

—American Legion.

Reported from Court.—"Is it true you called your wife a wanton woman?"

"Yes, your honor, w-a-n-t-i-n apostrophe; she's forever wantin' something."

—Christian Endeavor World.

Serenity.—The prisoner was not professionally represented. Before proceeding with the case, the judge said:

"This is a very serious offense you are charged with. If you are convicted, it means a long term of imprisonment. Have you no counsel to look after your defense?"

The prisoner, in the most confidential manner, leaned toward the judge and whispered:

"No, your Honor, I have no counsel, but that's all right, I have some very good friends on the jury."

—Trenton (N. J.) Courier.

Boiling Oil Too Merciful.—"Well, madam, why don't you wish to serve on the jury?" asked the judge.

"I'm opposed to capital punishment."

"But this is merely a case in which a wife is suing her husband for an accounting. It seems she gave him $500 to pay down on a handsome fur coat, and he is alleged to have lost the money at poker."

The woman juror spoke up promptly: "I'll serve. Maybe I'm wrong about capital punishment."

—Wright Engine Builder.

Next Case.—Magistrate: "Then you deny that you were rude to the policeman when he asked to see your license?"

Motorist: "Certainly, sir: all I said was that from what I could see of him, I am sure his wife would be happier as a widow!"—Answers.

The Last Resort.—An old man who was called into the witness box happened to be rather short-sighted, and went up the stairs which led to the bench instead of those that led to the box.

The magistrate, a man with a remarkable sense of humor, smiled.

"Do you want to be a magistrate like me, then?" he asked, good-naturedly.

"To be sure, your Honor," came the jovial answer. "I'm an old man now, an' maybe it's all I'm good for."

—Pittsburgh Sun-Telegraph.

Signing Off.—Judge: "Do you wish to marry again if you receive a divorce?"

Liza: "Ah should say not. Ah wants to be withdrawn from circulation."

—The Canning Trade.

A Denial.—Judge: "Sam, this is a serious charge against you. Have you anything to say in your defense?"

Sam (haughtily): "Yoh Hono', I not only denies the allegation, but I also declares the alligator is wrong."

—Missouri Outlaw.

Hear Ye!—Judge Parry, in "What the Judge Thought," tells of an old crier in Ennis, Ireland, who used to try and clear the court by shouting: "All ye blackguards that isn't laywers quit the court!"

—Antigo (Wis.) Journal.

Quack! Quack!—"A little bird told me what kind of a lawyer your father was."

"What did the bird say?"

"Cheep, cheep."

"Well, a duck told me what kind of a doctor your old man was."

—Stevens Stone Mill.

Locus in Quo.—Judge: "Where did the automobile hit you?"

Rastus: "Well, Jedge, if I'd been carrying a license number, it would hab busted it in a thousand pieces."

—Transmitter, Washington, D. C.

Obstructing Justice. — Prisoner: "Judge, I don't know what to do."

Judge: "Why, how's that?"

Prisoner: "I swore to tell the truth."

Judge: "Well?"

Prisoner: "But every time I try to tell it some lawyer objects."

Now, Will You Be Good?—The judge was giving his regulation lecture on the evils of gambling. "So you see," he concluded, "what a wicked thing it is to shoot craps, especially on the Sabbath. Have you nothing better than that to do on Sundays?"

"Oh, yessuh, Judge," replied the prisoner. "Most gen'ally ah caddies fo' ya when you plays golf with Mistuh Smith fo' a dolluh a hole."—Dresses, New York.

Too Expensive.—Lawyer: "For a nominal fee, I'll enter divorce proceedings against your husband at once."

Lady Client: "What do you consider a nominal fee?"

Lawyer: "Five hundred dollars."

Lady Client: "Never mind, I'll have him shot."—America's Humor.

Findings

TRAFFIC WASTE

As a measure of the possibilites of saving money through modern traffic regulation and control, A. B. Barber, Director of the National Conference on Street and Highway Safety and Manager of the Transportation Department of the Chamber of the United States, points to the enormous losses due to traffic congestion.

"Aside from the human factor," he says, "cities using modern traffic methods are receiving a direct dollars and cents return.

"A survey of traffic delays in downtown Boston showed that they cost the community $24,500,000 a year, in addition to losses from accidents amounting to more than $2,000,000 a year. Chicago's cost of traffic congestion has been estimated to be in excess of $600,000 a day and New York's more than $1,000,000 a day. The nation's bill for traffic delays is conservatively placed at $2,000,000,000 a year.

"There is another side to the picture. San Francisco found that its new traffic code resulted in reductions of accidents ranging from 30 to 40 per cent in the records of companies operating 50, 100 and 400 motor vehicles. One street railway company reported a reduction of 24.7 per cent in pedstrian accidents. A saving of $2,000,000 a year in the cost of automobile accidents is being made for San Francisco motorists. Los Angeles reports an increase of 30 per cent in the movement of street traffic after revising its regulations."

AN OVERLOADED COMMISSION

Whether something cannot be done to lighten the growing burden imposed upon the Interstate Commerce Commission and simplify the task set for it by Congress is a question upon which attention will be centered by the Railroad Committee of the Chamber of Commerce of the United States next month.

This inquiry will be conducted by a subcommittee under the chairmanship of Dr. Emory R. Johnson, of the University of Pennsylvania.

The enormity of the jobs assigned to the Commission is reflected in the growing length of the records in some of the cases with which they have dealt or are dealing. When the record of testimony taken in the Southern Freight Rate Readjustment case piled up to 4,000,000 words, it was thought that the limit had been reached, but in a pending investigation the testimony taken has reached 50,000 pages—15,000,000 words—quite enough to occupy for a long time a Commissioner who has nothing else to do.

Whether the resources of the Commission are not being overtaxed, whether Congress has saddled upon it more than it can do and complicated the situation by attempting to do by direct legislation what it has asked the Commission to do, are some of the problems that are demanding consideration.

TRUST LAWS AND ECONOMICS

How much the abandonment of the "gentlemen's agreement" and other similar practices has been due to the strong arm of the anti-trust laws and how much to the normal operation of economic forces might be a moot question, but it is still debated.

E. W. McCullough, Manager of the Department of Manufacture of the Chamber of Commerce of the United States, holds that "gentlemen's agreements" failed mainly because they were economically unsound.

"There has been much clamor," he says in an address before the Laundry-owner's National Associa-

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tion, "for the amending of our trust laws to permit industries and their organizations to regulate competition on a basis to insure fair profits, but, without questioning the honesty of purpose of such proposals, the economic impossibility of realization is readily seen.

"If an association truly represents an industry, it includes plants of all sizes and conditions. In such a grouping are the efficient and the inefficient—the high-cost factory as well as the low-cost factory. To give them equal protection prices and competing conditions must be arranged to take care of all classes. It simply cannot be done that way, for a price which would give the high cost member a fair profit would give the efficient low-cost man too much. Even if the law permitted an association to arrange such a protection for the members of its industry, the operation of the economic law—supply and demand—would destroy such a set-up."

Jangling Harps

In 75 Cal. Dec. 695, the court said: "Upon the trial of the case it was brought out that the Harps had lived a cat and dog life for several years," which would indicate that the Harps were sadly out of tune.

Remembered Them

In sustaining the lower court in a will case, the court says, in 331 Ill. 651: "He was the only member of her family who ever came to see her, or corresponded with her; that he and his family frequently came to see her; that she raised him from infancy until he was fourteen years of age; that she spoke frequently of him and that she spoke of none of the other of her relatives, except when enrolling them in a society of the church for prayers."

Help From Rome

(Continued from Page Seven)

A final and more drastic step would be to take the opinions that passed this first sifting, and condense them to limits of the essential, retaining the original language as far as possible, and arrange them in an orderly Digest. But the parturient pangs of such a process would cause such weeping and gnashing of teeth that it cannot be attempted in this present generation.

Hope springs eternal in the human breast, and some day the prayer of many a lawyer, as he groans under this burden of cases, may be answered. From all these evils, good Lord, deliver us!

Judicial Notice of Action of a Mule

We are asked to take judicial notice of the alleged fact that a mule which had been snowballed a minute or two before the accident would not have been moving along quietly immediately before the accident with the lines lying down in the cart. There was positive testimony that he was moving quietly, and we decline, as an appellate court, to take judicial notice of what a mule would do under any given circumstances. We would prefer to commit ourselves to the proposition that there is nothing more uncertain than the action of a mule under any circumstances. Chichester, J., in John T. Griffin Truck Corp. v. Smith, — Va. —, 142 S. E. 385.

Ne Plus Ultra

A teacher recently asked her class: "What compose the United States Congress?" A boy answered: "The United States Senate." The teacher said: "Is there not an inferior body?" "No," said the pupil, "there is no inferior body."